A SUCCESSFUL EXPERIMENT IN INTERNATIONAL RELATIONS

AN ADDRESS DELIVERED
BEFORE THE VICTORIAN CLUB OF BOSTON
ON FEBRUARY 17th, 1919

BY

LAWRENCE J. BURPEE,
Secretary for Canada of the International Joint Commission.

THE ROYAL SOCIETY OF CANADA
LIBRARY

OTTAWA
J. DE LABROQUERIE TACHÉ
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1919

A SUCCESSFUL EXPERIMENT IN INTERNATIONAL RELATIONS

AN ADDRESS DELIVERED
BEFORE THE VICTORIAN CLUB OF BOSTON
ON FEBRUARY 17th, 1919

BY

LAWRENCE J. BURPEE,

Secretary for Canada of the International Joint Commission.

OTTAWA
J. DE LABROQUERIE TACHÉ
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1919

59931—1

09513553

A SUCCESSFUL EXPERIMENT IN INTERNATIONAL RELATIONS

An Address delivered before the Victorian Club of Boston, On February 17, 1919, by Lawrence J. Burpee, Secretary for Canada of the International Joint Commission.

At this time, when the Peace Congress at Versailles is attempting to make Hun-proof certain principles of democracy, the vital need of which has been hammered home by the bitter lesson of the European war, it may not be out of place to remind ourselves that for ten years past the United States and Canada, working together in perfect harmony, have proved the practicability as well as the incalculable advantages of a working agreement for the peaceful settlement of international disputes. That agreement took shape in the Treaty of January 11, 1909, out of which grew the International Joint Commission.

The genesis of the Commission dates back to the nineties, when two irrigation congresses were held at Denver and Albuquerque. At the first of these, in 1894, Mr. J. S. Dennis, one of the Canadian delegates, introduced a resolution, which was unanimously adopted, urging upon the United States "the appointment of an International Commission to act in conjunction with the authorities of Mexico and Canada in adjudicating the conflicting rights which have arisen, or may hereafter arise, on streams of an international character." A similar resolution was adopted at Albuquerque the following year.

In 1896 the Government of Canada passed an Order in Council embodying the principles of these resolutions, and took up with the United States Government, through the British Embassy at Washington, the question of the establishment of an International Commission. That Government was not, however, prepared to go on with the matter at that time, and it was not until 1902 that by concurrent legislation the two Governments created what was known as the International Waterways Commission, which must not be confused with the International Joint Commission, and which was in a sense the father of that Commission.

The Waterways Commission, which consisted of six members, three representing the United States and three representing Canada, was purely an investigating body without any final jurisdiction. Its duties were to "investigate and report upon the conditions and uses of the waters adjacent to the boundary between the United States and Canada, including all of the waters of the lakes and rivers whose natural outlet is by the River St. Lawrence to the Atlantic Ocean; also upon the matter of the regulation of suitable levels; and also upon the effect upon the shores of the waters and the structures thereon and upon the interests of navigation by reason of diversion of these waters from, or change in, their natural flow; and further to report upon the necessary measures to regulate such diversion, and to make such recommendations for improvements and regulations as shall best subserve the interests of navigation in these waters."

The Waterways Commission submitted a number of valuable reports to the two Governments, which were subsequently published. It also made several recommendations, the more important of which provided for the establishment of certain guiding principles in the use of boundary waters, and also for the creation of a Commission having wider powers than its own.

As a result of these and other suggestions, from various quarters, negotiations were entered into at Washington in 1907 and 1908, between Mr. (now Lord) Bryce, then British Ambassador to the United States, and Mr. Root, then Secretary of State. Mr. Bryce had the assistance of the late Dr. W. F. King, of the International Boundary Commission, the late Sir George Gibbons, of the International Waterways Commission, and Hon. Wm. Pugsley, then Minister of Public Works, and now Lieutenant Governor of New Brunswick; Mr. Root was assisted by Mr. Chandler Anderson, of the State Department, and Mr. F. H. Newell, of the U. S. Reclamation Service. These negotiations finally culminated in the Treaty of January 11, 1909, ratified and proclaimed the following year. The Treaty was confirmed, so far as Canada was concerned, by an Act of Parliament in 1911, wherein it is stated that "the laws of Canada and of the several Provinces thereof are hereby amended and altered so as to permit, authorize, and sanction the performance of the obligations undertaken by His Majesty in and under the said treaty; and so as to sanction, confer, and impose the various rights, duties and disabilities intended by the said treaty to be conferred or imposed or to exist within Canada." Special legislation was not necessary in the United States, the Senate having already ratified the Treaty.

The Preamble of the Treaty sets forth its objects as "to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise." The Treaty it will be seen is designed not merely to settle questions at issue between the two countries, but to prevent disputes. The preamble seems to confine the Treaty to disputes involving the use of boundary waters, or interests along the common frontier, but as will be seen later Article X goes a good deal farther.

The Preliminary Article defines Boundary Waters as "the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary."

Boundary waters, therefore, include the international portions of the St. Croix and St. John rivers, between the State of Maine and the Province of New Brunswick; the St. Lawrence River from Cornwall to Kingston; Lake Ontario, Niagara River, Lake Erie, Detroit River, Lake St. Clair, St. Clair River, Lake Huron, St. Marys River, Lake Superior, the series of small rivers and lakes from Lake Superior over the height of land to Rainy Lake, Rainy Lake, Rainy River, and the Lake of the Woods, to that minute but very controversial point in diplomatic history, the northwest point of the Northwest Angle Inlet of the Lake of the Woods.

It will be noted that there are three exceptions to "boundary waters" as defined by the Treaty: (1) tributary waters which in their natural channels would flow into such lakes, rivers and waterways—such as the Seneca, Genesee and Sandusky, on the United States side, and the Grand, Thames and Michipicoten, on the Canadian side; (2) waters flowing from such lakes, rivers, and waterways—such as the Winnipeg, lower St. Lawrence and lower St. John; (3) waters of rivers flowing across the boundary—such as the Richelieu, Red, Souris, St. Mary, Milk, Columbia and Kootenay.

Article I of the Treaty provides that "the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally", subject to the laws and regulations of either country not inconsistent with the privilege of free navigation. And it is further agreed that "so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed

on either side of the line". The right is reserved to either country to adopt rules and regulations governing the use of its canals, and to charge tolls for the use thereof, so long as these apply equally to the citizens and vessels of both countries. Absolute equality of use is the governing principle of this Article.

It is a debatable point among geographers whether or not Lake Michigan comes within the definition of boundary waters, as a "bay, arm or inlet" of Lake Huron; but it seems clear from the language of Article I that that is not the intention of the treaty, as the navigation of Lake Michigan is granted to Canada "so long as this treaty shall remain in force", as an additional privilege to the "navigation of all navigable boundary waters", which has no limitation as to time.

The provisions of Article I include the United States and Canadian canals at Sault Ste. Marie, the Welland canal, the St. Lawrence River canals above the point where the international boundary strikes the river, and some smaller artificial waterways. It excludes such canals as the Erie on the United States side and the Rideau on the Canadian side, which do not connect boundary waters.

By Article II each of the High Contracting Parties reserves its national jurisdiction and control over the use and diversion of waters flowing across the boundary or into boundary waters; but it is provided that "any interference with or diversion from their natural channel of such waters on either side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs". Cases already existing at the date of the treaty, or expressly covered by special agreement between the parties, are excepted. The High Contracting Parties also reserve the right to object to any interference with or diversion of waters on the other side of the boundary, "the effect of which would be productive of material injury to the navigation interests on its own side of the boundary."

It would be difficult to overestimate the importance of this Article, which gives Canadians the right to go into the United States courts and seek redress for injury sustained in Canada; and gives Americans similar rights in Canadian courts. So far as grievances arising along the frontier are concerned, its effect is to erase the boundary and pool the resources of American and Canadian courts for the benefit of the people on both sides of these waterways.

Articles III and IV confer direct jurisdiction on the International Joint Commission, in the first case as to boundary waters, and in the second as to waters flowing from boundary waters or waters at a lower level than the boundary in rivers flowing across the boundary. The terms of these articles are so essential to the jurisdiction of the Commission, that they are quoted in full.

Article III reads:—

> "It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary water on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.
>
> "The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on Governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbours, and other Governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line, and do not materially affect

the level or flow of the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes."

Article IV reads:—

"The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary, unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

"It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

The provisions of the last paragraph of Article IV became the subject of one of the Commission's most important investigations, which I shall refer to later.

Article VIII formally confers the necessary jurisdiction on the Commission to act in all cases coming under Articles III and IV of the Treaty. So far as these classes of cases are concerned, the Commission is constituted an international court of appeal for both countries. In an article in the *Round Table*, a well-known Canadian lawyer who has repeatedly appeared before the Commission as counsel for the Dominion Government, has this to say as to the Commission's jurisdiction:—

"The decisions of the Commission are final. No appeal against them can be taken either by an individual or a Government. Thus there rests with an international body an authority over properties and rights which might otherwise have been regarded as distinctively national; and when the extent and value of the boundary waters are taken into account, the sacrifice of its own jurisdiction by each of the contracting parties will appear so much the more remarkable. These waters, forming almost half of the long boundary between the two countries, represent possibly the greatest asset which either community possesses."

Article VIII also defines the order of precedence to be observed among the various uses enumerated for these boundary waters and it is provided that, "no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence." This order of precedence recognizes the supreme importance of public health. All other uses are to be put aside so far as they conflict with the paramount requirement of "uses for domestic and sanitary purposes." Navigation interests come next. These interests on the Great Lakes are of enormous and rapidly increasing importance. Over one hundred million tons of freight are carried annually on the Great Lakes, the value of which exceeds $1,000,000,000. Not only is an enormous capital tied up in navigation or transportation on these waters, but the communities large and small along their shores are to a considerable extent dependent thereon, and to a less degree communities farther afield but connected by transportation lines with the lakes. The third and final use in the order of precedence is "for power and for irrigation purposes." Domestic and sanitary purposes therefore come first; navigation interests second; and power and irrigation last. As a matter of fact, although bracketed together in the Treaty, power and irrigation do not bear at all the same mutual relation to navigation. Broadly speaking, power development along the international frontier belongs to the eastern half of the continent, and irrigation to the western half. Power may come in direct conflict with navigation; irrigation is unlikely to do so. Use for power, though

of less vital or general significance to the Great Lakes communities than uses for sanitation or navigation, is nevertheless of very great and rapidly increasing importance. On the St. Mary's River, the Niagara, the Upper St. Lawrence, and elsewhere along the boundary, many millions of dollars have already been invested in the development of only a fraction of the available power.

The composition of the Commission is fixed by Article VII as "six Commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom, appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada." The three Commissioners first appointed by the President were Senator Thomas H. Carter, of Montana, Hon. James A. Tawney, formerly Chairman of the Appropriations Committee of Congress, and Frank S. Streeter, of New Hampshire. On the death of Senator Carter, the President appointed in his place Senator George Turner, who had been a Commissioner in the Alaskan Boundary dispute and also Counsel for the United States in the Fisheries Arbitration. Subsequently both Senator Turner and Mr. Streeter resigned, their places being taken by Senator Gardner, of Maine, and Hon. R. B. Glenn, formerly Governor of North Carolina.

On the Canadian side the three original Commissioners were: Hon. Th. Chase-Casgrain, K.C., Charles A. Magrath, and Henry A. Powell, K.C. Mr. Casgrain resigned in 1914, to become Postmaster General in the Dominion Cabinet. Mr. Paul B. Mignault, K.C., was appointed in his place; and he also resigned in 1918, on his appointment to the Supreme Court of Canada.

One may not perhaps realize at first the very unusual character of this tribunal. There is nothing else quite like it, nor has there been in the past. We have here three Americans and three Canadians, sitting not as national sections, more or less antagonistic, but as one judicial body, and pledged to give their best possible judgment, with the utmost impartiality, to the settlement of questions that arise sometimes on one side of the boundary and sometimes on the other. It is significant of the sympathetic attitude of Canadians and Americans toward each other and toward their common problems, that in every case dealt with by the Commission since its organization the decision has been unanimous.

In his opening statement as Chairman of the organization meeting of the Commission, Mr. Tawney made several statements that are worth repeating:—

> "The work", he said, "of promoting closer and more direct relations between the two great peoples on this continent who have the same language, come from the same race, have the same common fountain of law, the same traditions, and similar institutions of government, as well as the same ambitions for the continued success of their respective governments, is in fact the work of blazing the trail for the judicial settlement of all disputes where they occur between any two great nations".
>
> "The chief cause for congratulation, however, is that this treaty has provided a means for frank, direct and constant relations between the two neighbouring peoples who inhabit the greater part of the North American continent, and who must live in amicable relations to realize the ultimate ideal of our Anglo-Saxon civilization. This Commission constitutes the medium for this direct communication, and to it, by the express terms of the treaty, may be referred for consideration and settlement all questions of difference that may arise between the peoples living along our common frontier, without reservations or qualifications of any kind."

And in closing his address Mr. Tawney quoted the words of Mr. Commissioner Gore in deciding a case arising under the Jay Treaty, which may fairly be taken to represent the attitude adopted by the six representatives of the United States and the Dominion of Canada on the International Joint Commission toward the important questions with which they have been called upon to deal. "Although," said Gore, "I am a citizen of but one nation, I am constituted a judge for both. Each nation has the

same, and no greater right, to demand of me fidelity and diligence in the examination, exactness, and justice of the decision". The Commissioners have not approached these questions as two distinct groups of national representatives, each jockeying for advantages for its own side, but rather as members of a single tribunal, anxious to harmonize differences between the two countries, and to render decisions which would do substantial justice to all legitimate interests on both sides of the boundary, and particularly to those of the common people.

Mr. Taft and the late Colonel Roosevelt among others on the United States side of the line, the Duke of Connaught, the Duke of Devonshire, the late Sir Wilfrid Laurier and Sir Robert Borden on the Canadian side, have on various occasions drawn the attention of the public to the importance and significance of the Treaty of 1909 and of the work entrusted to the International Joint Commission. During one of the recent discussions at the Peace Congress, in connection with the organization of the International Waterways Commission, it is understood that Sir Robert Borden made particular reference to the jurisdiction of this Commission as an illustration of what might be accomplished in connection with such European rivers of an international character as the Rhine and the Danube.

To return to the Treaty, Article V fixes the authorized diversion from the Niagara River above the Falls, for power purposes, in the case of the United States at a daily diversion at the rate of twenty thousand cubic feet of water per second, and in the case of Canada at a daily diversion at the rate of thirty-six thousand cubic feet of water per second. The only statement in the Article as to the object of this limitation is that "it is expedient . . . to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected". There is reason to believe, however, that at least one of the governing factors in drafting this article was the preservation of the scenic beauty of Niagara Falls. It is also understood that in allowing the larger amount to Canada, the facts were taken into account that the great bulk of the Horseshoe Fall lies in Canadian territory, and that Chicago was, and still is, diverting a considerable amount of water from Lake Michigan which would otherwise go over Niagara Falls.

The concluding paragraph of this Article states that its prohibitions "shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation". The Commission had before it at one time the project of the Erie and Ontario Sanitary Canal. Promoters of this project gave its primary object as the conveyance of the sewage of Buffalo and other towns on the United States side of the Niagara River through a canal to a point of discharge in Lake Ontario. It appeared however from the evidence of experts that not only was the effectiveness of the canal for the purpose stated very problematical but that it would also involve its use for power purposes, possibly in contravention of the terms of Article V.

By Article VI of the Treaty the High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries are to be treated as one stream for the purposes of irrigation and power, and the waters thereof apportioned equally between the two countries. These two rivers rise in Montana, the first in the Rockies and the second in the foothills. Both cross the international boundary into Canada. The St. Mary flows into a tributary of the Saskatchewan, and ultimately finds its way into Hudson Bay. The Milk, after a course of about one hundred miles in Alberta, returns to Montana, and empties into the Missouri. The object of Article VI is to combine the waters of these two streams, and divide them equally between the people on either side of the boundary for irrigation purposes, this whole territory lying in what is known as the semi-arid belt. The measurement and apportionment of the waters of the two rivers is to be carried out under the direction of the Commission. An essential part of the project is the construction of a canal, now practically completed, from a point near the outlet of St. Mary's River from the Lower St. Mary's Lake, to a point on the Milk River. The United States' share of the water will then be conveyed by means of this

canal and the Milk River to irrigable lands in Montana, while Canada will take her share of the water by irrigation canals from the St. Mary River on the Canadian side.

Article XIV fixes the life of the Treaty, and therefore of the Commission, at five years from the date of the exchange of ratifications, "and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the others". The five-year period expired May 5th, 1915, but there is no indication of a desire on either side to denounce a convention the value of which has already been fully demonstrated.

In addition to its judicial functions under Articles III, IV and VIII, the Treaty contemplates the use of the Commission as an investigating body in connection with questions arising along the frontier. Article IX reads as follows:—

> "The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.
>
> "The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.
>
> "Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.
>
> "The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.
>
> "In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government."

It will be noted that an investigation under Article IX may be requested by either Government; that an obligation to make such a request is involved in the language of the Article, the word "shall" being construed as mandatory; and that in making such an investigation the findings of the Commission are not binding on the two countries, either as a decision or as an arbitral award. "It would" in the language of an editorial in the *American Journal of International Law* (1910, p. 672) "be difficult to overestimate the advantage and convenience to both countries of having a permanent body, organized as this is with both countries equally represented, upon which either may call for a thorough investigation of any questions of difference involving the interests of their citizens or subjects along the thousands of miles of their common frontier . . . . Although the reports of the Commission on the questions so referred are not in themselves binding upon either country, they will inevitably exercise a strong influence upon the ultimate settlement of such questions; and even if the Commissioners are not entirely in accord in the conclusions reached, their reports will at least furnish a common fund of information which will be of immense assistance in reaching a final adjustment by diplomatic negotiations".

It may be noted here that in actual practice all questions so far referred to the Commission for investigation under Article IX have been referred jointly by the two Governments, although it is obvious from the language of the Article that either Government could act independently if it saw fit to do so. It is also worth noting that in the

investigations so far reported on, the six Commissioners have been in every case in substantial accord in their conclusions and recommendations.

So far we have considered the powers entrusted to the Commission under Articles III and IV, and under Article IX, that is, as a judicial body and as an investigating body. The Treaty of 1909, however, goes even farther, constituting the Commission what Mr. Justice Riddell of Toronto calls a miniature Hague Tribunal for the United States and Canada. Article X reads as follows:—

> "Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.
>
> "A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.
>
> "If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth, fifth, and sixth paragraphs of Article XLV of The Hague Convention for the pacific settlement of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree."

A writer in the *American Journal of International Law* (1912, p. 192-3) after pointing out the signal service the Commission would be able to render the cause of international peace and good understanding even if limited in its jurisdiction under Articles III and IV and IX, goes on to say: "But the tribunal is invested with a greater usefulness by Article X, although a moral, rather than a legal, obligation is created because the contracting parties do not bind themselves absolutely to refer future differences but state that they 'may be referred'. It will be observed that no reservation or qualification of any kind is contemplated, for the Article expressly says 'any questions or matters of difference arising between the High Contracting Parties involving rights, obligations, or interests . . . . may be referred'". The writer points out that it is the obvious intention of the Treaty that the decision reached by the Commission shall bind the Governments. He also puts emphasis on the provision for reference of the question to an umpire, in case the Commission is unable to agree, and upon the fact that this umpire is also clothed with power to render a final decision. He concludes, "It is not too much to say that this Article constitutes a permanent international tribunal between Canada and the United States to which any questions or matters of difference arising between them may be referred and decided by the principles of law and justice."

Without going into details as to the various cases that have up to the present time come before the Commission for final determination under Articles III and IV, it may be said that they involve a great variety of very important interests, both public and private, from the St. Croix River in the east to the Lake of the Woods in the west.

Three investigations have so far been carried out by the Commission under the terms of Article IX. The first of these related to the construction of a dyke in the Detroit river, for the benefit of the navigation interests, the tremendous importance of which has already been mentioned.

The second question referred to the Commission related to the fixing of levels in the Lake of the Woods which would be best suited to the requirements of all the various interests on both sides of the boundary. It may not be generally known that the watershead of the Lake of the Woods exceeds twenty-six thousand square miles, equal to the combined areas of the States of Massachusetts, New Hampshire, Rhode Island, Connecticut and Delaware, or some five thousand square miles greater than the area of the Province of Nova Scotia. The capital invested in the various industries in this region is considerably over $100,000,000; the resources are enormous, of great variety, and only beginning to be developed; and communities as far apart as Duluth and Winnipeg were more or less directly interested in the fixing of a level on the Lake of the Woods and its tributaries, which would give the maximum benefit to the people on both sides of the boundary.

The extensive field work involved in the investigation was under the direction of two consulting engineers, one an American, Mr. Adolph F. Meyer, of Minneapolis, and the other a Canadian, Mr. Arthur V. White, of Toronto. After several years' careful work, in which they were of course constantly in touch with the Commission and acted under its direction, they submitted their report to the Commission in 1916. The Commission's Final Report to the two Governments was submitted in 1917. In this report the Commission recommended that it be authorized to exercise supervision and control over the operation of all dams and regulating works in these waters extending across the international boundary, as well as the dams and regulating works at Kettle Falls and at the outlets of the Lake of the Woods, which are in Canadian territory; and that it be empowered to appoint two engineers, one from each country, to act as its representatives under such rules and regulations as it might prescribe. The documents in the Lake of the Woods' investigation, which include several volumes of hearings and arguments, the results of the engineers' surveys and other data, and the Commission's Final Report, have all been printed and are available to those interested. It may perhaps be noted here that all the printed decisions and reports of the Commission may be obtained from the Commission's offices at Washington or Ottawa.

The third question, and by far the most important, referred to the Commission under Article IX, related to the Pollution of Boundary waters. Such pollution, it will be remembered, is prohibited by the last paragraph of Article IV. With a view to the enforcement of this clause of the Treaty, the Governments of Canada and the United States sent the Commission the following reference:—

> "1. To what extent and by what causes and in what localities have the boundary waters between the United States and Canada been polluted so as to be injurious to the public health and unfit for domestic or other uses?
>
> "2. In what way or manner, whether by the construction and operation of suitable drainage canals or plants at convenient points or otherwise, is it possible and advisable to remedy or prevent the pollution of these waters, and by what means or arrangements the proper construction or operation of remedial or preventive works, or a system or method of rendering these waters sanitary and suitable for domestic and other uses, be best secured and maintained in order to insure the adequate protection and development of all interests involved on both sides of the boundary and to fulfil the obligations undertaken in Article IV of the waterways treaty of January 11, 1909, between the United States and Great Britain, in which it is agreed that the waters therein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other?"

This reference is dated August 1, 1912. On January 16, 1914, the Commission sent the two Governments a Progress Report on the first branch of the investigation,

that is as to the extent, causes and localities of pollution. This report embodied the result of exhaustive field investigations, by a corps of sanitary experts, under the general direction of Dr. Allan J. McLaughlin, of the Public Health Service of the United States, with the co-operation of Dr. J. W. S. McCullough, Chief Officer of Health of Ontario, and Mr. F. A. Dallyn, Provincial Sanitary Engineer of Ontario. Throughout the investigation the Commission had the cordial co-operation of the United States Public Health Service, and of the Boards of Health of Ontario, Quebec, New York and Michigan.

The investigation, which involved an examination of the waters of the Great Lakes and their connecting rivers, Rainy Lake, Rainy River, the Lake of the Woods, and the boundary portion of the St. John River in the east, wherever pollution might extend from one side to the other, disclosed the gratifying fact that the great bulk of the Great Lakes water remains in its pristine purity, in spite of the fact that some seven million people have contracted the very bad habit of dumping all their sewage into these waters, and that the entire shipping of the Great Lakes, carrying in one season not less than 15,000,000 passengers, has followed the same evil practice. Serious pollution was found at many points along boundary waters, and particularly in the Detroit and Niagara Rivers, where the cities of Detroit and Buffalo, with a number of smaller communities on both sides of the boundary, have been doing their best to make the water of these rivers unfit for human consumption.

Severe epidemics of typhoid fever in the lake cities have for years past warned these communities that, while they were spending hundreds of millions on their streets and buildings, and in other ways adding to the comfort and convenience of their inhabitants, the most vital consideration of all, that of public health, was being grossly neglected. If the International Joint Commission should achieve nothing more than to awaken the cities of the Great Lakes to the vital importance of protecting their water supplies, it would have more than justified its existence.

In 1914 the Commission took up the second branch of the Pollution investigation, and as an initial step held a conference in New York with a group of sanitary engineers, including men of international standing, such as Mr. George W. Fuller, Mr. Earle B. Phelps, and Mr. George C. Whipple.

As a result of this conference, and the subsequent deliberations of the Commission it was decided to adopt tentatively at least, certain fundamental principles upon which the experts were in agreement. The most vital of these principles is, that while in certain cases where the ratio of water to volume of sewage is unusually large, the discharge of crude sewage into boundary waters may be without danger, "effective sanitary administration requires the adoption of the general policy that no untreated sewage from cities or towns shall be discharged into the boundary waters". The other principles relate more specifically to methods of sewage purification and water purification.

The field work in connection with the second branch of the investigation was carried out under the direction of Mr. Earle B. Phelps, who made his report to the Commission in 1916. The Commission's Final Report to the two Governments was submitted in 1918. In that report after setting forth the character and extent of the pollution, and the remedial treatment recommended, it was suggested that the two Governments confer upon the Commission jurisdiction to regulate and prohibit the pollution of boundary waters and waters crossing the boundary. While nothing has yet been done in the direction of conferring upon the Commission the jurisdiction recommended in its final report, the two Governments have (February, 1919) requested the Commission to draft rules and regulations designed to regulate and prohibit the pollution of boundary waters and waters crossing the boundary.

Looked at from any point of view, I think you will agree with me that this new method of dealing with international problems is in many respects much more effective than the old method. The Ship of State of the Old Diplomacy was not what one might call turbine-driven. It had in fact much of the solid dignity and immobility of a Spanish galleon. Sometimes it reached its destination in course of time; sometimes

never. Its course was always extremely circuitous. For instance a question, perhaps a trivial one, might arise at, let [illegible]y, Sarnia on the Canadian side of the St. Clair river, involving some conflict of interests or dispute with local interests at Port Huron on the United States side of the same river. Some diversion is perhaps contemplated or has already been carried out, or some work constructed on one side of these boundary waters, affecting the interests of the inhabitants on the other. The local authorities have no power or jurisdiction. The injured parties (let us assume they are Canadians) appeal to Ottawa. The case, cumbered with red tape, travels deliberately through several of the Dominion departments; rests perhaps for weeks in the file basket of one or other of the various officials; is referred back and forth between the federal authorities and their local officers; finally moves on to the Governor General's Office, and is sent overseas to the Colonial Office, in London, thence takes its dignified way to the Foreign Office, back across the Atlantic to the British Ambassador in Washington. The Ambassador takes the matter up with the Secretary of State of the United States, and the weary process of red tape is repeated in the departments of the Washington Government. By this time the original question has probably been more or less lost sight of under its load of official commentary. Eventually the original complaint, or its official version, reaches the source of the trouble. The other side of the question is presented by the people on the United States side of the boundary, and the documents, growing like a snowball as they move, start on their long, roundabout, diplomatic journey back to the local complainants in Canada. It is no exaggeration to say that such a case may travel backward and forward, not merely for months but for years, and in the end the parties interested may be as far from a settlement of the question at issue as they were in the beginning. It is true that in recent years it has been found possible to cut out, in some cases, the overseas part of the journey and deal directly, or less indirectly, with the United States Government through the Governor General's Office and the British Embassy, but even so the process has necessarily been exceedingly slow, cumbersome, and not always effective. Meanwhile, bitterness of feeling has been allowed to grow between two groups of people, separated only by an invisible boundary, and with every reason in the world for a neighbourly attitude towards one another.

One need not labour the point that this Tribunal, open as freely to the humblest citizen of either country as to the representatives of the Federal Governments, marks a big step forward in the relations of these two neighbouring commonwealths; and it does seem to me that the true measure of the Commission's usefulness to the people of the United States and Canada lies not even so much in its positive as in its negative qualities, not so much in the cases it has actually settled as in the infinitely larger number of cases that never come before it for consideration, simply because the Commission is there, as a sort of international safety-valve, and therefore the sting is taken out of the situation.